IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO.181 OF 2005

State through Public Prosecutor,
Panaji Goa ....Applicant

Versus

Saheb Dasthagir Patel,
Sawanthwadi(M.S.) ....Respondent

Shri S.N. Sardessai, P.P. for the State/Applicant.

Shri J.P. Mulgaonkar, Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

Date: 2nd September, 2005.

P.C.

The accused, driver of truck No.MH.07-0684, has been acquitted under Sections 279, 337 & 338 I.P.C. by judgment/order dated 12.11.04 in C.C. No.55/S/2004 of the learned Judicial Magistrate, First Class, Pernem, and the State has sought leave to appeal against the said acquittal.

2. The accident had taken place between a Minibus No.GA-01-U/2168 driven by Pw.4 Baptist D'Souza and the said truck allegedly driven by the accused at a place known as Torshem on the National Highway No.17 between Pernem and Patradevi. Both the vehicles were proceeding in the same Northern direction and while the Minibus driven by Pw.4 Baptist was ahead, the truck driven by the accused was behind the same. The impact took place at the back of the Minibus and the front portion of the truck.

3. The case of the prosecution was that the said accident or impact was caused on account of the rash and negligent driving of the said truck on account of which it dashed against the right side of the said Minibus, as a result of which the Minibus fell into a paddy field causing injuries to nine passengers.

4. The learned J.M.F.C., in acquitting the accused, came to the conclusion that the said Minibus was at fault by stopping the same at a distance of about 2 metres away from the edge of the tar road and in case the said Minibus had stopped partly on the edge of the tar road and partly on the kutcha road, then there would not have been a mishap and therefore the accused deserved to be given benefit of doubt.

5. Amongst the witnesses examined, there were three passengers namely, Pw.2 Bhandarbali, Pw.3 Rajaram and Pw.6 Supriya. They certainly could not have known as to how the accident took place although they have stated that at the time of accident the bus was slow. Pw.5 Ravi, the driver of the bus has stated that when they reached near Torshem bus stop, some passengers were about to get down and the conductor whistled for him to stop the bus and that he gave a signal of hand to stop and slow down the speed, when the truck came from behind and dashed against the right side of the bus. According to him the truck came in a speed and dashed against the right side as a result of which the bus plunged into the paddy field on the left side of the road. Pw.4 Baptist who is the conductor stated that when they reached at Torshem, some passengers were about to get

down and he whistled for the driver to stop and the driver signaled by hand in order to slow down the speed, when a truck came from the rear in a fast speed and dashed against the rear side of the bus, as a result of which the bus plunged into the paddy field.

6. The panchanama and the sketch- Exh.Pw.1/A colly do not show the existence of a bus stop and Pw.4 Baptist is silent about the same though Pw.5 Ravi has stated that there was a bus stop. Both have not stated at what distance was the said bus stop. Pw.4, Baptist has not even stated as to which point of the bus he was standing which enabled him to see that the driver had shown the signal by hand. One does not know whether the electric signals of the bus were working or not. Pw.7, Head Constable Naik who conducted the said panchanama and sketch has stated that there were brake marks on the road and the two brake marks, one of the length of 17 metres and the other of the length of 15 metres were brake marks of the truck. The said brake marks are reflected in the panchanama and sketch, as well. The said brake marks are indicative of the fact that the truck had applied brakes and if at all the truck driver had to apply brakes, it was because Pw.5 Ravi tried to stop his bus all of a sudden and that too comparatively in the middle of the road on being signaled by whistle by the conductor to stop the bus. In fact Pw.5 Ravi ought to have taken his bus more to the left before venturing to stop all f a sudden somewhat in the middle of the road. The fact that the accused applied brakes and tried to avoid a collision shows that rashness and negligence could not be attributed to him and in any event, he deserves to be given benefit of doubt which has been rightly extended to him by the learned J.M.F.C, Pernem.

7. This is not a fit case to grant leave to appeal. Hence the application is rejected.

N.A. BRITTO,J.

/vpf.